

FIRST REGULAR SESSION

HOUSE BILL NO. 839

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES MCMANUS (Sponsor), BARNES, KELLY (45),
RIZZO AND WEBBER (Co-sponsors).

1979L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 537, RSMo, by adding thereto nine new sections relating to the Missouri false claims and fraud prevention act.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 537, RSMo, is amended by adding thereto nine new sections, to be
2 known as sections 537.800, 537.802, 537.804, 537.806, 537.808, 537.810, 537.812, 537.814,
3 and 537.816, to read as follows:

**537.800. Sections 537.800 to 537.816 shall be known as the "Missouri False Claims
2 and Fraud Prevention Act".**

537.802. 1. As used in this section the following terms shall mean:

2 **(1) "Claim", includes any request or demand, whether under a contract or**
3 **otherwise, for money or property and whether or not the state has title to the money or**
4 **property, that:**

5 **(a) Is presented to an officer, employee, or agent of the state; or**

6 **(b) Is made to a contractor, grantee, or other recipient, if the money or property**
7 **is to be spent or used on the state's behalf or to advance a state program or interest, and**
8 **if the state:**

9 **a. Provides or has provided any of the money or property requested or demanded;**
10 **or**

11 **b. Will reimburse such contractor, grantee, or other recipient for any portion of the**
12 **money or property which is requested or demanded; and**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 13 (c) Does not include requests or demands for money or property that the state has
14 paid to an individual as compensation for state employment or as an income subsidy with
15 no restrictions on that individual's use of the money or property;
- 16 (2) "Knowing" or "knowingly", that a person, with respect to information:
17 (a) Has actual knowledge of the information;
18 (b) Acts in deliberate ignorance of the truth or falsity of the information; or
19 (c) Acts in reckless disregard of the truth or falsity of the information;
20
- 21 and requires no proof of specific intent to defraud;
- 22 (3) "Material", having a natural tendency to influence, or be capable of
23 influencing, the payment or receipt of money or property;
- 24 (4) "Obligation", an established duty, whether or not fixed, arising from an express
25 or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based
26 or similar relationship, from statute or regulation, or from the retention of any
27 overpayment;
- 28 (5) "Person", any natural person, partnership, corporation, association, or other
29 legal entity;
- 30 (6) "State", the state of Missouri, any of its agencies, boards, or commissions.
- 537.804. 1. Any person who:
- 2 (1) Knowingly presents, or causes to be presented, a false or fraudulent claim for
3 payment or approval;
- 4 (2) Knowingly makes, uses, or causes to be made or used, a false record or
5 statement material to a false or fraudulent claim;
- 6 (3) Conspires to commit a violation of any provision of this subsection;
- 7 (4) Has possession, custody, or control of property or money used, or to be used,
8 by the state and, knowingly delivers, or causes to be delivered, less than all of that money
9 or property;
- 10 (5) Is authorized to make or deliver a document certifying receipt of property used,
11 or to be used, by the state and, intending to defraud the state, makes or delivers the receipt
12 without completely knowing that the information on the receipt is true;
- 13 (6) Knowingly buys, or receives as a pledge of an obligation or debt, public
14 property from an officer or employee of the state who lawfully may not sell or pledge
15 property;
- 16 (7) Knowingly makes, uses, or causes to be made or used, a false record or
17 statement material to an obligation to pay or transmit money or property to the state or

18 knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay
19 or transmit money or property to the state;

20

21 is liable to the state for a civil penalty of not less than five thousand dollars and not more
22 than ten thousand dollars, as adjusted by the Federal Civil Penalties Inflation Adjustment
23 Act of 1990, 28 U.S.C. Section 2461, plus three times the amount of damages which the
24 state sustains because of the act of that person.

25 2. If the court finds that:

26 (1) The person committing the violation of this section furnished officials of the
27 state responsible for investigating false claims violations with all information known to
28 such person about the violation within thirty days after the date on which the defendant
29 first obtained the information;

30 (2) Such person fully cooperated with any investigation of such violation; and

31 (3) At the time such person furnished the state with the information about the
32 violation, no criminal prosecution, civil action, or administrative action had commenced
33 with respect to such violation, and the person did not have actual knowledge of the
34 existence of an investigation into such violation;

35

36 the court may assess not less than two times the amount of damages which the state
37 sustains because of the act of the person. A person violating this section shall also be liable
38 to the state for the costs of a civil action brought to recover any such penalty or damages.

39 3. Any information furnished under subdivisions (1) to (3) of subsection 2 of this
40 section shall be exempt from disclosure under 5 U.S.C. Section 552 and chapter 610.

41 4. This section does not apply to claims, records, or statements made under the
42 Internal Revenue Code of 1986, as amended.

537.806. 1. The attorney general diligently shall investigate a violation under
2 section 537.802. If the attorney general finds that a person has violated or is violating
3 section 537.802, the attorney general may bring a civil action under this section against the
4 person.

5 2. A person may bring a civil action for a violation of section 537.802 for the person
6 and for the state. The action shall be brought in the name of the state. The action may be
7 dismissed only if the court and the attorney general give written consent to the dismissal
8 and their reasons for consenting.

9 3. A copy of the complaint and written disclosure of substantially all material
10 evidence and information the person possesses shall be served on the state under the
11 attorney general. The complaint shall be filed in camera, shall remain under seal for at

least sixty days, and shall not be served upon the defendant until the court so orders. The attorney general may elect to intervene and proceed with the action within sixty days after it receives both the complaint and the material evidence and information.

4. The attorney general may, for good cause shown, move the court for an extension of the time during which the complaint remains under seal under subsection 3 of this section. Any such motion may be supported by affidavits or other submissions in camera.

5. Before expiration of the sixty-day period or any extensions obtained under subsection 4 of this section, the attorney general shall:

(1) Proceed with the action, in which case the action shall be conducted by the attorney general; or

(2) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

6. When a person brings an action under this section, no person other than the attorney general shall intervene or bring a related action based on the facts underlying the pending action.

537.808. 1. If the attorney general elects to proceed with the action authorized by section 537.806, he or she shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in subsection 2 of this section.

2. The attorney general may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the attorney general of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

3. The attorney general may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

4. Upon a showing by the attorney general that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the attorney general's prosecution of the case, or would be repetitious, irrelevant, or is for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

(1) Limiting the number of witnesses the person may call;

(2) Limiting the length of the testimony of witnesses;

(3) Limiting the person's cross-examination of witnesses; or

22 **(4) Otherwise limiting the participation by the person in the litigation.**

23 **5. Upon a showing by the defendant that unrestricted participation during the**
24 **course of the litigation by the person initiating the action would be for purposes of**
25 **harassment, or would cause the defendant undue burden or unnecessary expense, the court**
26 **may limit the participation by the person in the litigation.**

27 **6. If the attorney general elects not to proceed with the action, the person who**
28 **initiated the action shall have the right to conduct the action. If the attorney general so**
29 **requests, it shall be served with copies of all pleadings filed in the action and shall be**
30 **supplied with copies of all deposition transcripts at the attorney general's expense. When**
31 **a person proceeds with the action, the court, without limiting the status and rights of the**
32 **person initiating the action, may nevertheless permit the attorney general to intervene at**
33 **a later date upon a showing of good cause.**

34 **7. Whether or not the attorney general proceeds with the action, upon a showing**
35 **by the attorney general that certain actions of discovery by the person initiating the action**
36 **would interfere with the attorney general's investigation or prosecution of a criminal or**
37 **civil matter arising out of the same facts, the court may stay such discovery for a period of**
38 **not more than sixty days. Such showing shall be conducted in camera. The court may**
39 **extend the sixty-day period upon a further showing in camera that the attorney general has**
40 **pursued the criminal and civil investigation or proceedings with reasonable diligence and**
41 **any proposed discovery in the civil action will interfere with the ongoing criminal or civil**
42 **investigation or proceedings.**

43 **8. Notwithstanding claims authorized under section 537.806, the attorney general**
44 **may elect to pursue its claim through any alternate remedy available to the attorney**
45 **general, including any administrative proceeding to determine a civil monetary penalty.**
46 **If any such alternate remedy is pursued in another proceeding, the person initiating the**
47 **action under section 537.806 shall have the same rights in such proceeding as such person**
48 **would have had if the action had continued under this section. Any finding of fact or**
49 **conclusion of law made in such other proceeding that has become final shall be conclusive**
50 **on all parties to an action under this section. For purposes of the preceding sentence, a**
51 **finding or conclusion is final if it has been finally determined on appeal to the appropriate**
52 **court, if all time for filing such an appeal with respect to the finding or conclusion has**
53 **expired, or if the finding or conclusion is not subject to judicial review.**

537.810. 1. If the attorney general proceeds with an action brought by a person
2 **under section 537.806, such person shall receive at least fifteen percent but not more than**
3 **twenty-five percent of the proceeds of the action or settlement of the claim, depending upon**
4 **the extent to which the person substantially contributed to the prosecution of the action.**

5 Where the action is one which the court finds to be based primarily on disclosures of
6 specific information, other than information provided by the person bringing the action,
7 relating to allegations or transactions in a criminal, civil, or administrative hearing, in a
8 congressional, administrative, or Government Accounting Office or state agency report,
9 hearing, audit, or investigation, or from the news media, the court shall award such sums
10 as it considers appropriate, but in no case more than ten percent of the proceeds, taking
11 into account the significance of the information and the role of the person bringing the
12 action in advancing the case to litigation. Any payment made to a person under the first
13 or second sentence of this subsection shall be made from the proceeds. Any such person
14 shall also receive an amount for reasonable expenses which the court finds to have been
15 necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and
16 costs shall be awarded against the defendant.

17 2. If the attorney general does not proceed with an action brought by a person
18 under section 537.806, the person bringing the action or settling the claim shall receive an
19 amount which the court decides is reasonable for collecting the civil penalty and damages.
20 The amount shall not be less than twenty-five percent and no more than thirty percent of
21 the proceeds of the action or settlement and shall be paid out of such proceeds. Such
22 person shall also receive an amount for reasonable expenses which the court finds to have
23 been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses,
24 fees, and costs shall be awarded against the defendant.

25 3. Whether or not the attorney general proceeds with the action, if the court finds
26 that the action was brought by a person who planned and initiated the violation of section
27 537.804 upon which the action was brought, then the court may, to the extent the court
28 considers appropriate, reduce the share of the proceeds of the action which the person
29 would otherwise receive under subsection 1 or 2 of this section, taking into account the role
30 of that person in advancing the case to litigation and any relevant circumstances pertaining
31 to the violation. If the person bringing the action is convicted of criminal conduct arising
32 from his or her role in the violation of section 537.804, that person shall be dismissed from
33 the civil action and shall not receive any share of the proceeds of the action. Such dismissal
34 shall not prejudice the right of the attorney general to continue the action.

35 4. If the attorney general does not proceed with the action and the person bringing
36 the action conducts the action, the court may award to the defendant its reasonable
37 attorneys' fees and expenses if the defendant prevails in the action and the court finds that
38 the claim of the person bringing the action was clearly frivolous, clearly vexatious, or
39 brought primarily for purposes of harassment.

40 **5. A person other than the attorney general shall not bring an action under section**
41 **537.806 that is based on allegations or transactions that are the subject of a civil suit or on**
42 **administrative proceeding in which the state or the federal government is already a party.**
43 **The court shall dismiss any such action.**

44 **6. No court shall have jurisdiction over an action under section 537.806 based upon**
45 **the public disclosure of allegations or transactions in a criminal, civil, or administrative**
46 **hearing, in a congressional, state legislative, administrative or Government Accounting**
47 **Office report, hearing, audit, or investigation, or the news media, unless the action is**
48 **brought by the attorney general or the person bringing the action is an original source of**
49 **the information. For purposes of this subsection "original source" means an individual**
50 **who has direct and independent knowledge of the information on which the allegations are**
51 **based and voluntarily provided the information to the attorney general before filing an**
52 **action under section 537.806 which is based on the information.**

53 **7. The state shall not be liable for any expenses which a person incurs in bringing**
54 **an action under section 537.806.**

537.812. 1. A civil action brought under section 537.806 may not be brought:

2 **(1) More than six years after the date on which the violation of section 537.804 is**
3 **committed; or**

4 **(2) More than three years after the date when facts material to the right of action**
5 **are known or reasonably should have been known by the state official charged with the**
6 **responsibility to act in the circumstances, but in no event more than ten years after the date**
7 **on which the violation is committed, whichever occurs last.**

8 **2. If the attorney general elects to intervene and proceed with an action brought**
9 **under section 537.806, the state may file its own complaint or amend the complaint of a**
10 **person who has brought an action under section 537.806 to clarify or add detail to the**
11 **claims in which the state is intervening and to add any additional claims with respect to**
12 **which the state contends it is entitled to relief. For statute of limitations purposes, any such**
13 **state pleading shall relate back to the filing date of the complaint of the person who**
14 **originally brought the action, to the extent that the claim of the state arises out of the**
15 **conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior**
16 **complaint of that person.**

17 **3. In any action brought under section 537.806, the person or the attorney general**
18 **shall be required to prove all essential elements of the cause of action, including damages,**
19 **by a preponderance of evidence.**

20 **4. Notwithstanding any other provision of law, the Federal Rules of Criminal**
21 **Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the**

22 state in any criminal proceeding charging fraud or false statements, whether upon a
23 verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant
24 from denying the essential elements of the offense in any action which involves the same
25 transaction as in the criminal proceeding and which is brought under section 537.804.

26 **5. Any action brought under section 537.806 may be brought in any circuit court**
27 **in which the defendant or, in the case of multiple defendants, any one defendant can be**
28 **found, resides, transacts business, or in which any act proscribed by section 537.806**
29 **occurred. In addition, the federal district courts shall have jurisdiction over any action**
30 **brought under the laws of any state or local government if the action arises from the same**
31 **transaction or occurrence as an action brought under 31 U.S.C. Section 3730.**

32 **6. With respect to the state or any local government that is named as a co-plaintiff**
33 **with the United States in an action brought under section 537.806, a seal on the action**
34 **ordered by the court under subsection 3 of section 537.806 shall not preclude the state or**
35 **the person bringing the action from serving the complaint, any other pleadings, or the**
36 **written disclosure of substantially all material evidence and information by the person**
37 **bringing the action on the law enforcement authorities that are authorized under state law**
38 **or local ordinance to investigate and prosecute such actions on behalf of the state or local**
39 **government, except that such seal applies to the law enforcement authorities so served to**
40 **the same extent as the seal applies to the other parties in the action.**

537.814. 1. Whenever the attorney general, or a designee, for the purposes of this
2 **section, has reason to believe that any person may be in possession, custody, or control of**
3 **any documentary material or information relevant to a Missouri false claims and fraud**
4 **prevention act investigation, the attorney general, or a designee, may, before commencing**
5 **a civil proceeding under section 537.806 or making an election under section 537.808, issue**
6 **in writing and cause to be served upon such person, a civil investigative demand requiring**
7 **such person:**

- 8 **(1) To produce such documentary material for inspection and copying;**
9 **(2) To answer in writing written interrogatories with respect to such documentary**
10 **material or information;**
11 **(3) To give oral testimony concerning such documentary material or information;**
12 **or**
13 **(4) To furnish any combination of such material, answers, or testimony.**

14
15 **The attorney general may delegate the authority to issue civil investigative demands under**
16 **this subsection. Whenever a civil investigative demand is an express demand for any**
17 **product of discovery, the attorney general shall cause to be served, in any manner**

18 authorized by this section, a copy of such demand upon the person from whom the
19 discovery was obtained and shall notify the person to whom such demand is issued of the
20 date on which such copy was served. Any information obtained by the attorney general
21 or a designee of the attorney general under this section may be shared with any qui tam
22 relator if the attorney general or designee determine it is necessary as part of any
23 investigation under the Missouri false claims and fraud prevention act.

24 2. Each civil investigative demand issued under subsection 1 of this section shall
25 state the nature of the conduct constituting the alleged violation of the Missouri false claims
26 and fraud prevention act which is under investigation, and the applicable provision of law
27 alleged to be violated.

28 3. If such demand is for the production of documentary material, the demand shall:

29 (1) Describe each class of documentary material to be produced with such
30 definiteness and certainty as to permit such material to be fairly identified;

31 (2) Prescribe a return date for each such class which will provide a reasonable
32 period of time within which the material so demanded may be assembled and made
33 available for inspection and copying; and

34 (3) Identify the investigator to whom such material shall be made available.

35 4. If such demand is for answers to written interrogatories, the demand shall:

36 (1) Set forth with specificity the written interrogatories to be answered;

37 (2) Prescribe the dates at which time answers to written interrogatories shall be
38 submitted; and

39 (3) Identify the investigator to whom such answers shall be submitted.

40 5. If such demand is for the giving of oral testimony, the demand shall:

41 (1) Prescribe a date, time, and place at which oral testimony shall be commenced;

42 (2) Identify an investigator who shall conduct the examination and the custodian
43 to whom the transcript of such examination shall be submitted;

44 (3) Specify that such attendance and testimony are necessary to the conduct of the
45 investigation;

46 (4) Notify the person receiving the demand of the right to be accompanied by an
47 attorney and any other representative; and

48 (5) Describe the general purpose for which the demand is being issued and the
49 general nature of the testimony, including the primary areas of inquiry, which will be
50 taken pursuant to the demand.

51 6. Any civil investigative demand issued under this section which is an express
52 demand for any product of discovery shall not be returned or returnable until twenty days

53 after a copy of such demand has been served upon the person from whom the discovery
54 was obtained.

55 7. The date prescribed for the commencement of oral testimony pursuant to a civil
56 investigative demand issued under this section shall be a date which is not less than seven
57 days after the date on which demand is received, unless the attorney general or designee
58 determines that exceptional circumstances are present which warrant the commencement
59 of such testimony within a lesser period of time.

60 8. The attorney general shall not authorize the issuance under this section of more
61 than one civil investigative demand for oral testimony by the same person unless the person
62 requests otherwise or unless the attorney general, after investigation, notifies that person
63 in writing that an additional demand for oral testimony is necessary.

537.816. 1. Any employee, contractor, or agent shall be entitled to all relief
2 necessary to make that employee, contractor, or agent whole, if that employee, contractor,
3 or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner
4 discriminated against in the terms and conditions of employment because of lawful acts
5 done by the employee, contractor, or agent on behalf of the employee, contractor, or agent
6 or associated others in furtherance of other efforts to stop one or more violations of section
7 537.804.

8 2. Relief under subsection 1 of this section shall include reinstatement with the
9 same seniority status that employee, contractor, or agent would have had but for the
10 discrimination, two times the amount of back pay, interest on the back pay, and
11 compensation for any special damages sustained as a result of the discrimination, including
12 litigation costs and reasonable attorneys' fees. An action under this section may be
13 brought in the appropriate court for the relief provided in this subsection.

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